

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Namik Yilmaz

Serial No.: 10/597,338

Filed: July 20, 2006

For: High-Frequency Heating Device

Technology Center: 3700

Group Art Unit: 3742

Examiner: Quang T. Van

Appeal No.

APPELLANT'S REPLY BRIEF

This is the reply brief to the Examiner's answer brief of 03/03/2011.

ARGUMENT (37 C.F.R. 41.37(c)(1)(vii))

REJECTIONS UNDER 35 U.S.C. §103(a)

1. *Applicant's Claims Are Not Rendered Obvious Under 35 U.S.C. §103 Over Any Of The Prior Art Patents*

The Examiner's response brief filed on March 3, 2011 does not address all of the issues regarding the claims brought forth by the Applicant. Specifically, the Examiner did not acknowledge the fact that the cited prior art teaches away from the disclosed invention as required by *KSR Int'l Co. v. Teleflex* and did not address the further limitations of claims 2 and 3.

A. Claims 1-3 rejected over *Machara* in view of *Nilssen*

1. Claim 1

Specifically, the Examiner has maintained a conclusory, one sentence statement regarding the combination of *Machara* and *Nilssen* in the answer. This statement does not provide the Applicant with an understanding of why a person of ordinary skill in the art would combine the inventions to create Applicant's invention. In particular, the Examiner states that "[i]t would have been obvious to one ordinary (sic) skill in the art at the time the invention was made to utilize in *Machara* a low-pass filter connecting with the ground in order to reduce noise from the feeding circuit." (Examiner's Answer Brief p. 5). Moreover, the Examiner goes on to state that there is no requirement that a motivation to make the modification be expressly articulated." (Examiner's Answer Brief p. 5). The Applicant respectfully disagrees with this assertion. The Supreme Court in *KSR Int'l Co. v. Teleflex* specifically states that the analysis supporting obviousness should be made explicit and should "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements" in the manner claimed. *See, KSR Int'l Co. v. Teleflex*, 550 U.S. 398, 418 (2007). Moreover, the Federal Circuit has explicitly indicated that the Examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). In the current proceeding, the Examiner has not made any articulated reasoning nor has he

identified a reason that would have cause the Applicant to combine *Maehara* and *Nilssen*. In order to make a prima facie case of obviousness, the Examiner is *required* to specifically state some reason for the elements of the prior art to be combined. Here, there is no such reasoning.

Additionally, the Examiner does not address the fact that *Maehara* does not disclose Applicant's claim 1 and explicitly teaches away from the information cited therein as it listed this information as "prior art," and *Maehara* discloses its invention to solve these "problems" that lead away from using a low pass filter. Therefore, *Maehara* does not disclose Applicant's claim 1 and, in fact, teaches away therefrom.

Moreover, the Examiner fails to speak to the fact that it would not have been obvious to one of ordinary skill at the time of the invention because Applicant would not look to combine *Maehara* with *Nilssen* to create his invention because *Nilssen* does not describe a high-frequency heating where current is smoothed without decreasing the voltage. This is not taught in *Nilssen* and it appears that both the current and voltage in *Nilssen* would be decreased. In fact, *Nilssen* is directed to an invention of the "crest-factor" of the current supplied to the magnetron. Therefore, it would not have been obvious of the Applicant to look to *Maehara* as combined with *Nilssen* to create the invention. These differences are fundamental to each invention, and if combined would destroy either one. Moreover, a person of ordinary skill in the art would not look to combine devices that work in different ways.

2. Claim 2

With respect to Claim 2, the Examiner has not indicated in the answer brief how the further limitations presented in Claim 2 differentiate it from the prior art. In fact, the Examiner did not address Claim 2 at all. As such, it appears that Claim 2 should be allowed over the cited prior art.

Further, because Claim 2 is a dependent claim that adds further limitations to independent Claim 1, it should be allowed in dependent form because independent Claim 1 is not rendered obvious by *Maehara* in view of *Nilssen*. See, *In re Johnson*, 589 F.2d 1070, 1080 (CCPA 1978). As such, *Maehara* in view of *Nilssen* does not render Applicant's Claim 2 obvious under 35 U.S.C. §103. Applicant respectfully requests reconsideration of his claim.

3. Claim 3

With respect to Claim 3, the Examiner has not indicated in the answer brief how the further limitations presented in Claim 3 differentiate it from the prior art. In fact, the Examiner did not address Claim 3 at all. As such, it appears that Claim 3 should be allowed over the cited prior art.

Further, because Claim 3 is a dependent claim that adds further limitations to independent Claim 1, it should be allowed in dependent form because independent Claim 1 is not rendered obvious by *Maehara* in view of *Nilssen*. See, *In re Johnson*, 589 F.2d 1070, 1080 (CCPA 1978). As such, *Maehara* in view of *Nilssen* does not render Applicant's Claim 3 obvious under 35 U.S.C. §103. Applicant respectfully requests reconsideration of his claim.

Conclusion

Applicant maintains that the Examiner has not made a prima facie case. The Examiner has failed to address the points brought up in the Applicant's initial appeal, as such under KSR Applicant's appeal should be granted and the claims allowed.

Respectfully submitted,

Date: 05/03/2011

/Carey Brandt Anthony/
Carey Brandt Anthony, Reg. No. 55,022
Anthony D. Logan, Reg. No. 41,162
Venable, Campillo, Logan & Meaney, P.C.
Attorneys for Applicant
1938 E. Osborn Road
Phoenix, Arizona 85016
(602) 631-9100